In the Supreme Court of the United States.

OCTOBER TERM, 1903.

RIVERDALE COTTON MILLS,
Petitioner.

vs.

ALABAMA & GEORGIA MANUFACTURING COMPANY, *ET AL.*,
Respondents.

Petition for Certiorari.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Riverdale Cotton Mills, respectfully represents:

FIRST.

On June 10, 1901, your petitioner filed in the Circuit Court of the United States for the Northern District of Georgia its bill of complaint against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, J. M. Chilton, and a firm of Welles, Bennett & Welles. Said bill was filed as ancillary to certain proceedings theretofore had in said court.

SECOND.

Said bill of complaint alleged substantially the following facts:

(1.)—The Riverdale Cotton Mills is a corporation, organized under the laws of the State of Georgia, and a citizen of and resident in that State;

(2.)—The Alabama & Georgia Manufacturing Company (hereinafter for brevity called the Manufacturing Company), is a corporation organized under the laws of the State of Georgia, but claiming to be organized also under the laws of Alabama; the Huguley Manufacturing Company (hereinafter for brevity called the Huguley Company), is a corporation organized under the laws of the State of Georgia, but claiming to be organized also under the laws of Alabama. Each of said last named corporations, if in fact organized under the laws of both States, had but one set of stockholders and directors under each organization, conducted its business as a single corporate entity with its office in Georgia, and with property situated partly in Georgia and partly in Alabama.

(3.)—On or about January 2, 1884, the Manufacturing Company, without describing itself otherwise than by name, at its office in Georgia, executed a mortgage of all its property to three trustees, to secure an issue of bonds. The trustees were: J. J. Robinson, W. T. Huguley, and W. C. Yancey.

(4.)—In 1888 all the property of the Manufacturing Company was sold subject to the mortgage under judicial proceedings in a State court in Georgia to persons who conveyed it to the Huguley Company, in which W. T. Huguley above named was interested.

(5.)—After the acquisition by the Huguley Company of this interest in the property of the Manufacturing Company, default was made in the payment of interest

due July 1, 1890, on the mortgage bonds, and the default having continued for six months, on January 20, 1891, J. J. Robinson, one of the trustees under the mortgage, brought a bill of complaint in the Circuit Court of the Northern District of Georgia against the Manufacturing Company and the Huguley Company, both described as organized under the laws of Georgia, and against W. T. Huguley, another of the trustees; the third trustee, Yancey, had died. This bill was taken *pro confesso* against Huguley. Each of the other defendants appeared and defended.

(6.)—The answers filed by the Manufacturing Company and the Huguley Company to Robinson's bill admitted that each corporation was a citizen of Georgia as alleged in that bill, admitted the execution of the mortgage and bonds by the Manufacturing Company, admitted that the Manufacturing Company had ceased to carry on business, and that its equity of redemption in the mortgaged property had passed to the Huguley Company. The answer of the Huguley Company also prayed that it be decreed entitled to any surplus proceeds on the sale of the mortgaged property.

(7.)—In the suit brought by Robinson, testimony was taken; the case was heard upon its merits; a decree was entered May 30th, 1892, foreclosing the mortgage and ordering a sale; a sale was had; the property was bought by a committee of bondholders and conveyed to a corporation called the Galeton Cotton Mills. From this decree an appeal was taken by the Manufacturing Company and the Huguley Company, to the Circuit Court of Appeals, and the decree was reversed and the cause sent back for further proceedings.

(8.)—On June 10, 1893, the Huguley Company and the Manufacturing Company filed a petition in the foreclosure suit, asking that the rents and profits from the date of the sale be decreed to the Huguley Company for an accounting and restitution. Thereupon the court ordered an account of rents and profits, and that the amount be credited on the mortgage debt.

(9.)—On March 30, 1895, a second decree for a foreclosure and sale was entered. From this decree the Huguley Company and the Manufacturing Company appealed, but the appeal was dismissed, and in May, 1896, the property was again sold, and the sale was confirmed on June 25th, 1896. On October 15, 1898, a decree was entered again confirming the sale of May, 1896, and ordering the execution of a deed; and pursuant thereto a deed was executed to the petitioner, and all the purchase money was paid into court by the petitioner.

(10.)—The Huguley Company and the Manufacturing Company appealed from the decree entered on October 15, 1898, to the Circuit Court of Appeals. The decree was confirmed, and the appellants thereupon sued out an appeal to this Honorable Court, which appeal was dismissed on February 24, 1902.

(11.)—On June 10, 1901, while the appeal to this Honorable Court last referred to was pending, the Huguley Company and the Manufacturing Company filed a bill of complaint in the Chancery Court for Chambers County, in the State of Alabama, against this petitioner, the Galeton Cotton Mills, the West Point Manufacturing Company, a corporation organized under the laws of Georgia; J. J. Robinson, and W. T. Huguley, alleging in substance that the Manufacturing Company was organized under the laws of Alabama, and as such was not made a party to the foreclosure suit brought by Robinson, and was not served with process in that suit; that the Huguley Company was a corporation organized under the laws of Alabama, that no ancillary proceedings had ever been had to foreclose the mortgage as to the mortgaged property situated in Alabama, and that all the proceedings in the Circuit Court for the Northern District of Georgia were null and void so far as concerned the mortgaged property in Alabama. The bill further sought to hold the petitioner, the Galeton Cotton Mills and the West Point Manufacturing Company, liable for the rents and profits from May, 1892.

(12.)—All the matters set up in the bill filed in the Alabama Chancery Court were or might have been set up and determined in the suit brought by Robinson in the Circuit Court. No question was ever raised in the foreclosure suit attacking the jurisdiction of the court to order a foreclosure of all the mortgaged property as well that in Alabama as that in Georgia. The Huguley Company and the Manufacturing Company in bringing their suit in Alabama seek merely to try again the same issues and the same matters already fully heard and investigated in the Circuit Court and to impeach collaterally all the decrees entered in the Circuit Court in the cause.

(13.)—The bill brought in the Alabama Chancery Court was brought by the same solicitors who represented the Huguley Company and the Manufacturing Company in the Circuit Court, to-wit: J. M. Chilton and Welles, Bennett & Welles, and these solicitors are joined for purpose of an injunction.

(14.)—The bill prayed an injunction against the further prosecution of the suit brought in the Alabama Chancery Court.

THIRD.

On the filing of the petitioner's bill of complaint in the Circuit Court for the Northern District of Georgia, a temporary restraining order was granted and a subpoena and order to show cause why an injunction should not be granted was issued.

FOURTH.

On June 21, 1901, all the respondents, without appearinging specially or otherwise objecting to the sufficiency of service on them, filed an "Answer to the bill and response to rule to show cause," signed by "Solicitors for Respondents," containing substantially the following allegations:

(1)—That both the Huguley Company and the Manufacturing Company are corporations chartered under the laws of Alabama, and that while the Manufacturing Company may have been incorporated in Georgia it was first incorporated in Alabama, and that there never was by action of the States of Georgia and Alabama any merger of the two corporations, and that the Alabama corporation is a distinct entity. That the original foreclosure suit brought by Robinson was against the Manufacturing Company, as a corporation of Georgia, and not of Alabama. That the Huguley Company was never incorporated in Georgia.

(2.)—That even if in contemplation of law the Huguley Company and the Manufacturing Company as corporations organized under the laws of Alabama were parties to the foreclosure suit they are not bound by the proceedings, because the court had no jurisdiction in that suit for want of proper diversity of citizenship, and because part of the property decreed to be sold was situated in Alabama.

(3.)—That the Circuit Court had no jurisdiction of the bill filed by your petitioner, because the plaintiff therein, and according to the allegations of the bill the corporations respondent therein, were all citizens of Georgia, and the suit was not properly ancillary.

(4.)—That under Revised Statutes, Sec. 720, the court could not issue an injunction to stay proceedings in a State court.

(5.)—That the defendants in the suit in the Chancery Court of Alabama had filed therein demurrers, pleas and answers, seting up as defences the same matters now relied on.

(6.)—That the court had no jurisdiction of the original foreclosure suit, because the plaintiff therein and one of the defendants, the Huguley Company, were both citizens of Alabama.

(7.)—That the court had no jurisdiction to order a sale in the foreclosure suit, because before any sale was made the Georgia charter of the Manufacturing Company had expired by limitation.

(8.)—That the court had no jurisdiction to order a sale, because all or a large and separable part of the property was situated in Alabama.

(9.)—The answer prayed that the court issue no further injunction or order, and dismiss the bill for want of jurisdiction of the persons and subject matter of the proceedings.

FIFTH.

On October 8, 1901, an interlocutory decree was entered continuing the injunction until the decision on the appeal then pending in this court from the final decree in the foreclosure suit. That appeal was dismissed by this court on February 24, 1902. (Huguley Mfg. Co. Galeton Cotton Mills, 184 U. S.), and on said February 24, 1902, this court refused (In re Huguley Mfg. Co. and Ala. & Ga. Mfg. Co., 184 U. S.), to grant a writ of prohibition against the Circuit Court for the Northern District of Georgia in this case. On September 29, 1902, this case was heard on the bill and proceedings and the record in the foreclosure suit. A final decree was then entered, perpetually restraining the further prosecution of the suit in the Chancery Court in Alabama.

SIXTH.

From the decree entered in September 29, 1902, the two respondent corporations took an appeal to the Circuit Court of Appeals, asigning as errors substantially:

(1.)—That the Circuit Court should have dismissed the bill for want of jurisdiction of the subject matter and of the parties.

(2.)—That the bill was not an ancillary bill.

(3.)—That the Manufacturing Company as a Georgia corporation was a party to the original foreclosure suit and the decree therein was not binding upon it as an Alabama corporation.

(4.)—That the Circuit Court had no jurisdiction of the persons of the corporations enjoined.

(5.)—That the suit for an injunction was local.

(6.)—That the issue of an injunction was prohibited by Revised Statutes, Sec. 720.

(7.)—That there was no evidence to support the decree.

(8.)—That the expiration by limitation of the charter in Georgia of the Manufacturing Company prevented the decree for sale from being operative.

(9.)—That the conveyance pursuant to the sale under the foreclosure decree of land in Alabama was ineffective.

(10.)—That the Huguley Company was not bound by the foreclosure decree.

(11.)—That the court should not in any event enjoin an accounting in which the complainant in the ancillary suit had no interest.

(12.)—That no title passed under the foreclosure sale to any property in Alabama, and it was too late now by ancillary bill to perfect the title by ordering a conveyance from the defendants in the foreclosure suit.

SEVENTH.

On the .... day of January, 1904, the Circuit Court of Appeals, Judge PARDEE dissenting, sustained the appeal

and ordered the bill to be dismissed on the ground that the Alabama & Georgia Mfg. Company, organized in Alabama, and the Huguley Manufacturing Company organized in Alabama, were different entities from the corporations of the same name organized in Georgia; were not parties to the foreclosure suit, and, therefore, were not bound by the decree therein, and could bring their bill in the State court in Alabama to redeem the mortgaged property situated in that State; and apparently also on the ground that the Circuit Court for the Northern District of Georgia had not made and could not make a valid decree for the sale of the mortgaged property situated in Alabama. The dissenting Judge was of opinion that the double incorporation did not constitute two corporate entities, and that the bill was properly ancillary and within the jurisdiction of the Circuit Court.

EIGHTH.

Your petitioner is advised that the decree of the Circuit Court of Appeals was erroneous on the following grounds:

(1.)—If either or both of the respondent corporations was incorporated both in Alabama and Georgia and was made a party to and appeared in the foreclosure suit and admitted itself to be a corporation organized in Georgia, the decree in the suit was binding upon such corporation both as a Georgia and as an Alabama corporation.

(2.)—If either or both of the respondent corporations was incorporated only in Alabama and was sued in the foreclosure suit as a corporation organized under the laws of Georgia and admitted the allegation as to citizenship, neither such corporation nor any other party to the suit could thereafter in a collateral proceeding attack the validity of the final decree in the foreclosure suit on the ground of want of jurisdiction.

(3.)—The Circuit Court for the Northern District of Georgia had power in the foreclosure suit to foreclose the whole mortgage and order a sale of the property in Alabama, as well as of that in Georgia.

(4.)—The bill filed by the petitioner in the Circuit Court for the Northern District of Georgia to restrain the further prosecution of the suit in the Chancery Court in Alabama was in all respects an ancillary bill, and the court had jurisdiction thereof regardless of the citizenship of the parties.

(5.)—The Circuit Court had jurisdiction of the persons of the respondents since they appeared generally.

(6.)—If the Circuit Court had not acquired jurisdiction of the persons of the respondents, yet as it had jurisdiction of the subject matter, the bill should not have been dismissed for want of jurisdiction.

(7.)—Revised Statutes, Sec. 720, did not prevent the issue of an injunction.

The following questions which were involved and were decided by the Circuit Court of Appeals, are of general importance and interest:

First—The effect of a decree or judgment against a corporation which is organized under the laws of several States, when sued as a corporation organized under the laws of one of those States.

Second—The right of a defendant corporation which in good faith has been sued in a Circuit Court of the United States as organized under the laws of and as a citizen of one State and has admitted the truth of the allegations, to impeach the decree or judgment collaterally on the ground that it was in fact organized under the laws of

another State, and that, therefore, the Circuit Court had no jurisdiction, because there was not the necessary diversity of citizenship.

Third—The power of a Circuit Court of the United States to foreclose in one proceeding and by one sale a mortgage on real estate situated partly in one State and partly in another, when it has personal jurisdiction over the mortgagor.

Fourth—The right of a Circuit Court of the United States to entertain as an ancillary bill a bill to restrain a suit brought in another court by persons bound by a decree of the Circuit Court to impeach a title derived under that decree, on grounds that already have been or might have been fully presented.

Fifth—The effect of Revised Statutes, Sec. 720, on the right of a Circuit Court of the United States to restrain proceedings in a State court brought by persons bound by a decree of the Circuit Court to impeach that decree and a title derived thereunder.

Your petitioner believes that the decree of the Circuit Court of Appeals for the Fifth Circuit, is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided; and your petitioner submits herewith, as a part of this application, a certified copy of the record, of the decree of reversal, and of the opinions of the Judges of the Circuit Court of Appeals, and a brief in support of this petition.

Wherefore, your petitioner respectfully prays: That a writ of *certiorari* may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, requiring said Court to certify and send to this Honorable Court, on a day certain therein to be designated, a full and complete transcript of the record and all proceedings of said United States Circuit Court of Appeals in said case entitled Alabama & Georgia Manufacturing Company, *et al.* vs. Riverdale Cotton Mills, No. 1258, to the end that said case may be reviewed and determined by this Honorable Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem appropriate; and that the said judgment of the said United States Circuit Court of Appeals may be reversed by this Honorable Court.

RIVERDALE COTTON MILLS,

By

Thomas N. Watts

Louis D. Brandeis

William H. Brandeis

Its Solicitors.